

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

KITCHEN WINNERS NY INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-cv-5276
)	
ROCK FINTEK LLC,)	
)	
Defendant.)	
)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, defendant Rock Fintek LLC (“Rock Fintek”) hereby gives notice of removal of this action currently pending in the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. As grounds for removal, Rock Fintek states as follows:

I. THE STATE COURT ACTION AND BACKGROUND

The State Court Action

1. This action commenced on May 17, 2022, by way of a Summons and Complaint naming as plaintiff Kitchen Winners NY Inc. (“Kitchen Winners”), against Rock Fintek in New York County Supreme Court, styled as *Kitchen Winners NY Inc. v. Rock Fintek LLC*, Index No. 656318/2022.

2. Rock Fintek received a copy of the Complaint via its registered agent on May 25, 2022. Copies of the documents that were received by Rock Fintek are attached hereto as **Exhibit A**.

3. Plaintiff brought this lawsuit as a preemptive strike seeking to be paid for purported gloves that plaintiff and its affiliates sold to Rock Fintek and the supposed cost of

associated ground transportation claimed to total \$1 million.

4. With this Notice of Removal, Rock Fintek removes this action to this Court on the basis of diversity jurisdiction as more fully described below.

II. THIS COURT HAS DIVERSITY JURISDICTION OVER THIS ACTION

The Parties

5. Plaintiff Kitchen Winners is a New York corporation with its principal place of business in Brooklyn, New York. *See Exhibit A* (Cmplt., ¶ 1). Thus, Kitchen Winners is a citizen of New York for purposes of establishing diversity jurisdiction.

6. Defendant Rock Fintek is a Delaware limited liability company whose sole member is Thomas Kato, an individual domiciled in and a citizen of the State of Florida. Thus, Rock Fintek is a citizen of Florida for purposes of establishing diversity jurisdiction. *See Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015) (citizenship of a limited liability company is determined by the citizenship of its members).

7. Accordingly, because the defendant is not a citizen of the same state as the plaintiff or any indispensable yet-to-be joined parties,¹ complete diversity exists. 28 U.S.C. § 1332(a)(3).

Amount in Controversy

8. Plaintiff has expressly alleged in the Complaint that it is seeking \$400,000 for

¹ As the record will bear out, Kitchen Winners brought this action as a preemptive strike in apparent anticipation of Rock Fintek's claims, including for breach of contract, fraud and conspiracy in connection with the underlying glove transaction as a result of which Rock Fintek will be seeking tens of millions of dollars in damages against Kitchen Winners and its affiliate Adorama Inc., which is a party to the pertinent contractual relationship and is a necessary party to this case. Adorama Inc. is a New York corporation with its principal place of business located in New York. Thus, the anticipated impleading of Adorama Inc. or any of its New York affiliates and co-conspirators will not affect complete diversity.

gloves and \$600,000 for transportation costs. *See Exhibit A* (Cmplt. ¶¶ 14, 16).

9. Thus, plaintiff has expressly alleged amounts that meet the amount in controversy requirement of 28 U.S.C. §1332(a).

10. Because there is complete diversity among the parties and because the amount in controversy requirement is satisfied, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and removal is proper.

III. PROCEDURAL REQUIREMENTS FOR REMOVAL

11. Defendant Rock Fintek received process by email on May 25, 2022. Accordingly, this removal is timely. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 347-48 (1999).

12. This action is properly removed to this Court because the action is pending within a state court in this district and division. 28 U.S.C. § 1441(a).

13. List of Parties: Plaintiff is Kitchen Winners USA Inc.
Defendant is Rock Fintek LLC.

14. List of Attorneys:

Counsel for Plaintiff
LIPSIUS-BENHAIM LAW LLP
Ira S. Lipsius
Alexander J. Sperber
80-02 Kew Gardens Road, Suite 1030
Kew Gardens, New York 11415
Telephone: 212-981-8440
Facsimile: 888-442-0284
ilipsius@lipsiuslaw.com
asperber@lipsiuslaw.com

Counsel for Defendant

Phillip Rakhunov
POLLACK SOLOMON DUFFY LLP
485 Madison Avenue, Suite 1301
New York, NY 10022
212-493-3100 (Tel)
617-960-0490 (Fax)
prakhunov@psdfirm.com

15. Trial by Jury: It appears from the Complaint that plaintiff has not requested a trial by jury. Rock Fintek thus reserves its right to make such a demand pursuant to Federal Rules of Civil Procedure, Rule 38.

16. Court from which Case is Removed: Supreme Court of the State of New York, County of New York, 60 Centre St, New York, NY 10007.

17. Notice: Along with the filing of this Notice, Defendants are also filing notice in the Supreme Court of the State of New York, County of New York and providing plaintiff with copies pursuant to 28 U.S.C. § 1446(d).

V. CONCLUSION

WHEREFORE, Rock Fintek removes this action from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York.

Dated: June 22, 2022

Respectfully submitted,

ROCK FINTEK LLC,

By: /s/Phillip Rakhunov
Phillip Rakhunov
POLLACK SOLOMON DUFFY LLP
485 Madison Avenue, Suite 1301
New York, NY 10022
212-493-3100 (Tel)
617-960-0490 (Fax)
prakhunov@psdfirm.com

CERTIFICATE OF SERVICE

The undersigned certifies all counsel of record are being served with this Notice of Removal by email on June 22, 2022:

/s/Phillip Rakhunov